

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

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DISTRICT OF MARYLAND
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Chambers of
Ellen Lipton Hollander
District Court Judge

BY _____ DEPUTY
November 19, 2018

LETTER TO COUNSEL

Re: *State of Maryland v. United States of America, et al.*
Civil No.: ELH-18-2849

Dear Counsel:

As you know, on September 11, 2018, the State of Maryland filed a single-count action under the Declaratory Judgment Act, 28 U.S.C. § 2201, against a host of defendants: the United States of America; the United States Department of Justice; Jefferson B. Sessions, III, in his official capacity as Attorney General; the United States Department of Health and Human Services; Alex M. Azar, II, in his official capacity as Secretary of Health and Human Services; the United States Internal Revenue Service; and Charles P. Rettig, in his official capacity as Commissioner of Internal Revenue. ECF 1 (the "Complaint"). The State alleges that the Trump administration has refused to appropriately defend and enforce the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010) (collectively, the "Affordable Care Act" or "Act"). *Id.* ¶¶ 35-42.

Thereafter, on November 7, 2018, Mr. Sessions resigned from his position as the Attorney General, and President Donald J. Trump appointed Matthew G. Whitaker as the Acting Attorney General. On November 11, 2018, following Mr. Whitaker's appointment, the State filed a "Motion for Preliminary Injunction and to Substitute Defendant" (ECF 6), accompanied by a memorandum of law. ECF 6-1 (collectively, "Motion for Preliminary Injunction"). The State claims that Deputy Attorney General Rod J. Rosenstein is the Acting Attorney General. Therefore, it seeks to "restrain and enjoin defendants from answering the complaint," ECF 6 at 1, and from moving forward in this litigation with Mr. Whitaker appearing as the Acting Attorney General. ECF 6-1 at 3. Additionally, the State seeks to substitute Deputy Attorney General Rod. J. Rosenstein, in his official capacity, as the Acting Attorney General. ECF 6 at 1.

In a telephone conference call held on November 13, 2018, I was advised that the State intended to file an Amended Complaint substituting Mr. Whitaker as a defendant, in lieu of Mr. Sessions. By Order of the same date, I set relevant briefing deadlines and scheduled a hearing for December 19, 2018, in connection with the State's Motion for Preliminary Injunction. *See* ECF 7. In addition, I suggested that, at the conclusion of that hearing, we would set a date for defendants' response to the Amended Complaint. *See id.* ¶ 5.

Shortly thereafter, the State filed an Amended Complaint. ECF 8 (the "Amended Complaint"). It asserted the same allegations against defendants that were alleged in the initial Complaint. *See id.* However, the State named two additional defendants: Mr. Rosenstein and Mr. Whitaker, both in their official capacities at the Department of Justice. *Id.* ¶ 15.

Despite the provision of ECF 7, ¶ 5, defendants have moved to dismiss the Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(1), for lack of subject matter of jurisdiction, and under Fed. R. Civ. P. 12(b)(6), for failure to state a claim. ECF 11. The motion is supported by a memorandum of law. ECF 11-1 (collectively, "Motion to Dismiss"). In their Motion to Dismiss, defendants raise a standing issue that may have an impact on the pending Motion for Preliminary Injunction.

In light of the standing issue raised by defendants, the schedule is hereby amended, as follows:

1. The State shall respond to the Motion to Dismiss by **5:00 p.m. on December 3, 2018.**
2. The government may reply by **5:00 p.m. on December 10, 2018.**
3. In all other respects, ECF 7 remains unchanged.

Despite the informal nature of this letter, it is an Order of the Court and shall be docketed as such.

Sincerely,

/s/

Ellen Lipton Hollander
United States District Judge